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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,384	11/17/2000	David John Balter	DN2000179L/SA	8567

7590 06/18/2004

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EXAMINER

VARGOT, MATHIEU D

ART UNIT PAPER NUMBER

1732

DATE MAILED: 06/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/715,384

Applicant(s)

BALTER ET AL.

Examiner

Mathieu D. Vargot

Art Unit

1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/14/03 & 11/17/00</u> . | 6) <input type="checkbox"/> Other: ____. |

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Devitt et al (see col. 3, line 64 through col. 4, line 28) in view of any of Rhyne (see 280 in Fig. 8 and col. 13, lines 32-36), Wolfer (see 10 in the Figures) or German Offenleg 1,729,614 (see Abstract).

The primary reference discloses the basic claimed method and apparatus for post cure correction of tires which have been selected for treatment due to a tire deformity defect comprising the steps and means to sealingly hold the beads concentric to the axis of rotation of the tire (ie, the embodiment in which the tire is mounted on a rim and inflated) and inflating the tire to a controlled pressure for a controlled period of time to reduce the degree of deformity. The tire is also heated to a temperature within the instant temperature range during the correction treatment. Essentially, Devitt et al lacks a showing of providing a 360-degree circumferential tread restraint during the inflation and heating. Each of the secondary references discloses restraining the tread of a tire in such a manner during a post cure inflation which follows vulcanization, the post cure inflation designed to reduce defects generated during the vulcanization so that a more uniform tire is produced. Clearly, it is well known in the tire making art to restrain the tread/outer surface of the tire in a circumferential manner during post cure inflation, which is a process for post cure correction of tires. In that sense, the secondary

references constitute analogous art and in fact solve the instant problem of the tread of the tire being unrestrained during a post-cure inflation designed to remove defects (ie, non-uniformities) in the cured tire. It would have been obvious to one of ordinary skill in this art to employ a tread ring or external tire restraint as taught in the secondary references in the process and apparatus of Devitt et al so that the tread would be conformed to the ideal and desired shape and not be overstretched during the correction. Devitt et al heats tires with the instant ply cords to a temperature within the instant range so it is submitted that the primary reference is also teaching heating the tire to a temperature above the glass transition temperature of the ply cords as set forth in instant claim 3. It is submitted that repeating the treatment for tires still judged to be unacceptable after a first treatment would have been an obvious modification to the process of Devitt et al particularly since the manufacturer would clearly have nothing to lose by doing so. This is fairly well known in the tire art and if the tire did not improve upon additional treatment, it would be either ground to an acceptable level or discarded.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,660,212. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of previously issued patent –212 and the instant claims essentially set forth a method of post cure correcting defects in a tire by heating and inflating the tire while the tread is 360 degree restrained circumferentially. US Patent –212 recites that such correction occurs during a post cure inflation while the instant claims are directed to such a correction after the post cure inflation when the defect has been determined. However, given the similarities between the steps of the two methods and that both are performed after vulcanization of a tire to remove defects resultant from the vulcanization of said tire, it is submitted that the instant method and that set forth in USP –212 are obvious variants over each other.

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kumagai and Balter et al –212 disclose post cure inflation treatments.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni, can be reached on 571 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot
June 11, 2004

Mathieu D. Vargot
Primary Examiner
Art Unit 1732